

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Smt. Vidya & Ors.

Vs. State of Rajasthan & Anr.

S.B.CR.MISC. PETITION NO.64/2004

DATE OF ORDER

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December 11, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

None present for the petitioners.

Mr.Ashok Upadhyaya,P.P.

None present for non-petitioner No.2, the first informant.

BY THE COURT:

I have gone through the memo of petition as also the record of the trial court. Order dt. 21.5.2002 passed by the Judicial Magistrate, Jodhpur City, Jodhpur (for short 'the trial court' hereinafter) has been impugned by the instant criminal misc. petition under section 482 Cr.P.C.

The facts giving rise to the instant petition are that non-petitioner No.2 lodged a first information report being FIR No. 195 dt. 11.10.2000 against the petitioners for the offences under

sections 448, 427 and 380 I.P.C. After investigation, the police filed the FR on the ground that offence under section 427 I.P.C. is made out since the offence is non-cognizable and, therefore, the FR was filed. On notice to non-petitioner No.2, the non-petitioner No.2 filed a protest petition. On the protest petition, the trial court took the cognizance of the offences under sections 448, 427 and 380 I.P.C. and issued the process. Hence, this petition.

From the perusal of the record more particularly the FIR, statements of the witnesses, site map and even the conclusion arrived at by the police that the occurrence took place and a damage to property of the complainant has been caused by the petitioners punishable under section 427 I.P.C. The complainant is a tenant of the petitioners and, therefore, his possession has not been disputed, he was in lawful possession of the shop having name and style as Rainbow Photo Studio. It appears that a civil suit was filed by the first informant, non-petitioner No.2 against the petitioners apprehending the forceful possession of the rented shop an interim order maintaining the status quo against the present petitioners was also passed by the civil court. However, after passing the order of status quo by the civil court on 10.10.2000, it is alleged that on 11.10.2000, the petitioners committed the trespass in the rented shop of the first informant

and caused damage to his property, broke the glass of showcase of the shop, which finds support from the site inspection note. So far as committing theft of TV Set, Computer, VCR and Camera are concerned, I have gone through the statements of first informant and Pramod Panwar, who alleged to have informed the first informant on mobile phone regarding breaking of the shop on which the first informant came and in the meantime Assistant Sub-Inspector also came. In presence of the Assistant Sub-Inspector, the petitioners went inside the hotel. This shows that when the first informant, the witness Pramod Panwar and Assistant Sub-Inspector came, the petitioners were in the shop of the first informant causing damage to the shop and committed the trespass but so far taking away these articles alleged by the non-petitioner No.2, it could not be possible to take away the articles in presence of the first informant, Pramod Panwar and Assistant Sub-Inspector. In the circumstances, therefore, the order impugned to the extent of taking cognizance for the offence under section 380 I.P.C. cannot be maintained and is liable to be set aside. However, the order taking cognizance for the offences under sections 448 and 427 I.P.C. are based on sufficient material and in my view, there is prima facie ground to proceed against the petitioners for the offences under sections 448 and 427 I.P.C.

In the result, the petition is partly allowed to the extent that the order impugned taking cognizance for offence under section 380 I.P.C. is set aside, however, the order impugned taking cognizance for the offences under sections 448 and 427 I.P.C. is maintained. Record of the trial court be returned forthwith.

[H.R.PANWAR],J.

m.asif/-